UNITED STATES DISTRICT COURT

for the

District of Columbia

United States of America v. David Nicholas Dempsey DOB: [redacted]	)))))))	Case No.

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 6, 2021 in the county of _____ in the _____ in the District of Columbia, the defendant(s) violated:

Code Section	*Offense Description*
18 U.S.C. § 1512(c)(2)	Obstruction of an Official Proceeding,
18 U.S.C. § 111(a)(1) and (b)	Assaulting, Resisting, or Impeding Certain Officers Using a Dangerous Weapon,
18 U.S.C. § 231(a)(3)	Obstruction of Law Enforcement During Civil Disorder,
18 U.S.C. § 1752(a)(1), (2), (4) and (b)(l)(A)	Entering or Remaining, Disorderly and Disruptive Conduct, and Engaging in Physical Violence in a Restricted Building or Grounds with a Deadly or Dangerous Weapon,
40 U.S.C. § 5104(e)(2)(D) and (F)	Disorderly Conduct in a Capitol Building or Grounds and Act of Physical Violence in the Capitol Grounds or Buildings.

This criminal complaint is based on these facts:

See attached statement of facts.

☒ Continued on the attached sheet.

[redacted]

Complainant's signature

[redacted] Special Agent

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone.

Date: 08/25/2021

Digitally signed by G. Michael Harvey

Judge's signature

City and state: Washington, D.C.

G. Michael Harvey, U.S. Magistrate Judge

Printed name and title

STATEMENT OF FACTS

Your affiant, [redacted] is a Special Agent of the Federal Bureau of Investigation (FBI) assigned to Los Angeles Field Office Joint Terrorism Task Force ("JTTF"). My duties at the JTTF include investigating violations of the laws of the United States, specifically investigations of domestic and foreign terrorism. Currently, I am a tasked with investigating criminal activity in and around the Capitol grounds on January 6, 2021. As a Special Agent, I am authorized by law or by a Government agency to engage in or supervise the prevention, detention, investigation, or prosecution of a violation of Federal criminal laws.

The U.S. Capitol is secured 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification were allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was also closed to members of the public.

On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in separate chambers of the United States Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020. The joint session began at approximately 1:00 p.m. Shortly thereafter, by approximately 1:30 p.m., the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

As the proceedings continued in both the House and the Senate, and with Vice President Mike Pence present and presiding over the Senate, a large crowd gathered outside the U.S. Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

At such time, the certification proceedings were still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, around 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of the U.S. Capitol Police, as others in the crowd encouraged and assisted those acts.

Shortly thereafter, at approximately 2:20 p.m. members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the United States Congress was effectively suspended until shortly after 8:00 p.m. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.

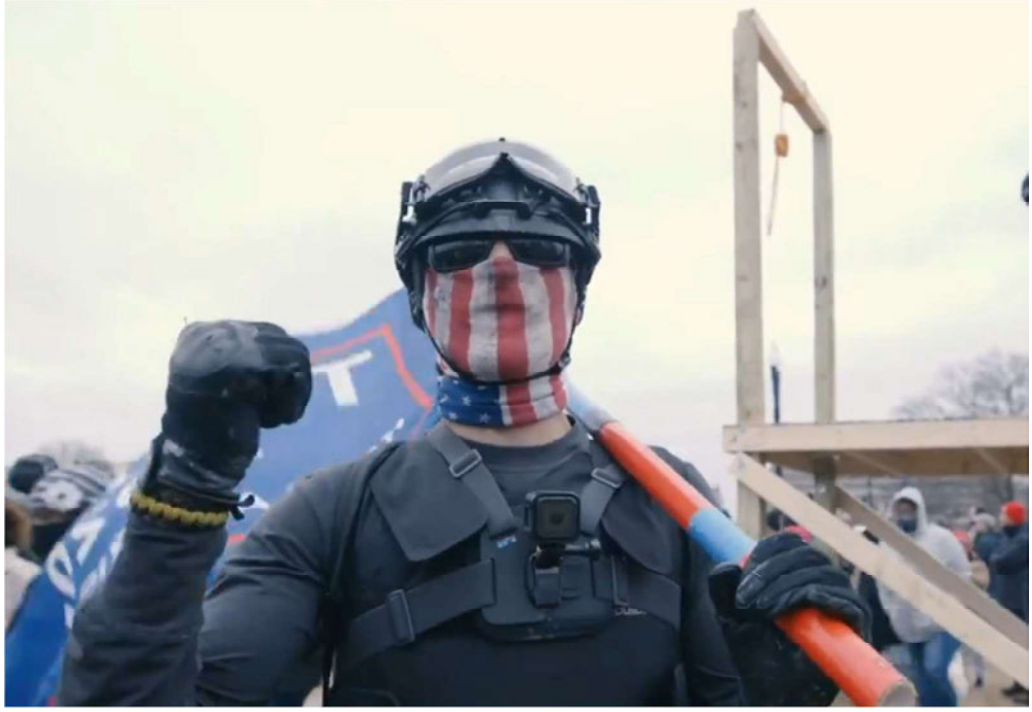
During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted evidence of violations of local and federal law, including scores of individuals inside the U.S. Capitol building without authority to be there.

After the attack that took place on the Capitol on January 6, 2021, the FBI began investigating an individual who was captured on numerous videos attacking police on the Lower West Terrace of the Capitol Building. In the videos, the individual is seen wearing several different outfits, but predominantly is shown wearing a black shirt, dark helmet, goggles and an American flag gaiter covering most of his face. Because of this attire, the individual was dubbed "#FlagGaiterCopHater" by individuals discussing the Capitol riots on social media and on websites.

In a video obtained by the FBI from YouTube, at https://youtu.be/9hph5KkYw4E (5:20 to 7:00), which, based on my experience in this investigation, I believe to have been filmed on January 6, 2021 on the National Mall in Washington D.C. prior to the riot at the Capitol Building, #FlagGaiterCopHater delivered a monologue in front of a wooden structure representing a gallows fitted out with a noose. He stated, in part:

> Them worthless fuckin' shitholes like Jerry Nadler, fuckin' Pelosi …. They don't need a jail cell. They need to hang from these motherfuckers [pointing to gallows]. …. They need to get the point across that the time for peace is over. …. For four, or five years really, they've been fuckin' demonizing us, belittling us, … doing everything they can to stop what this is, and people are sick of that shit. …. Hopefully one day soon we really have someone hanging from one of these motherfuckers….

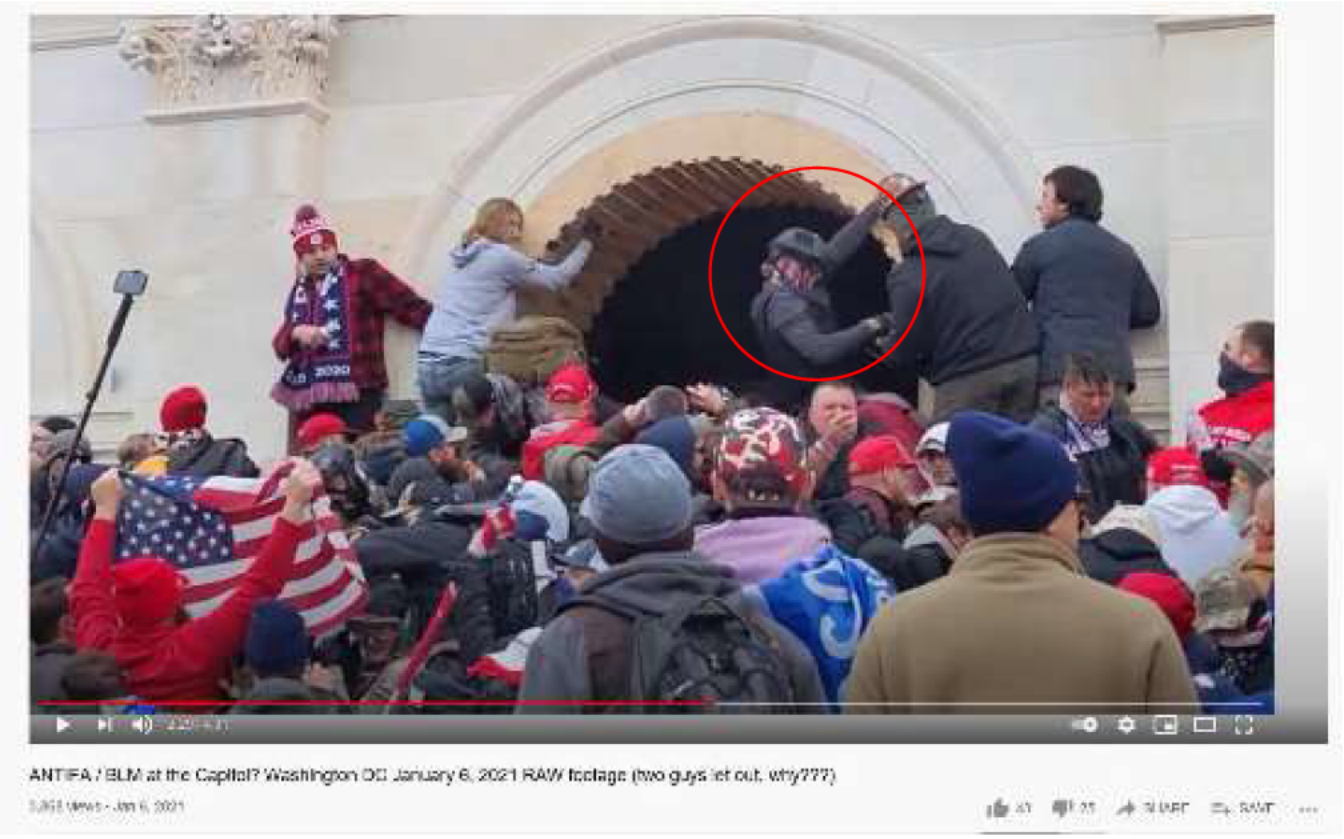
Two still shots from this video of #FlagGaiterCopHater standing in front of the gallows are shown below.



In the above still shot, #FlagGaiterCopHater is wearing a distinctive yellow and black woven bracelet, along with a black shirt, dark helmet, goggles, flag gaiter and reinforced gloves.

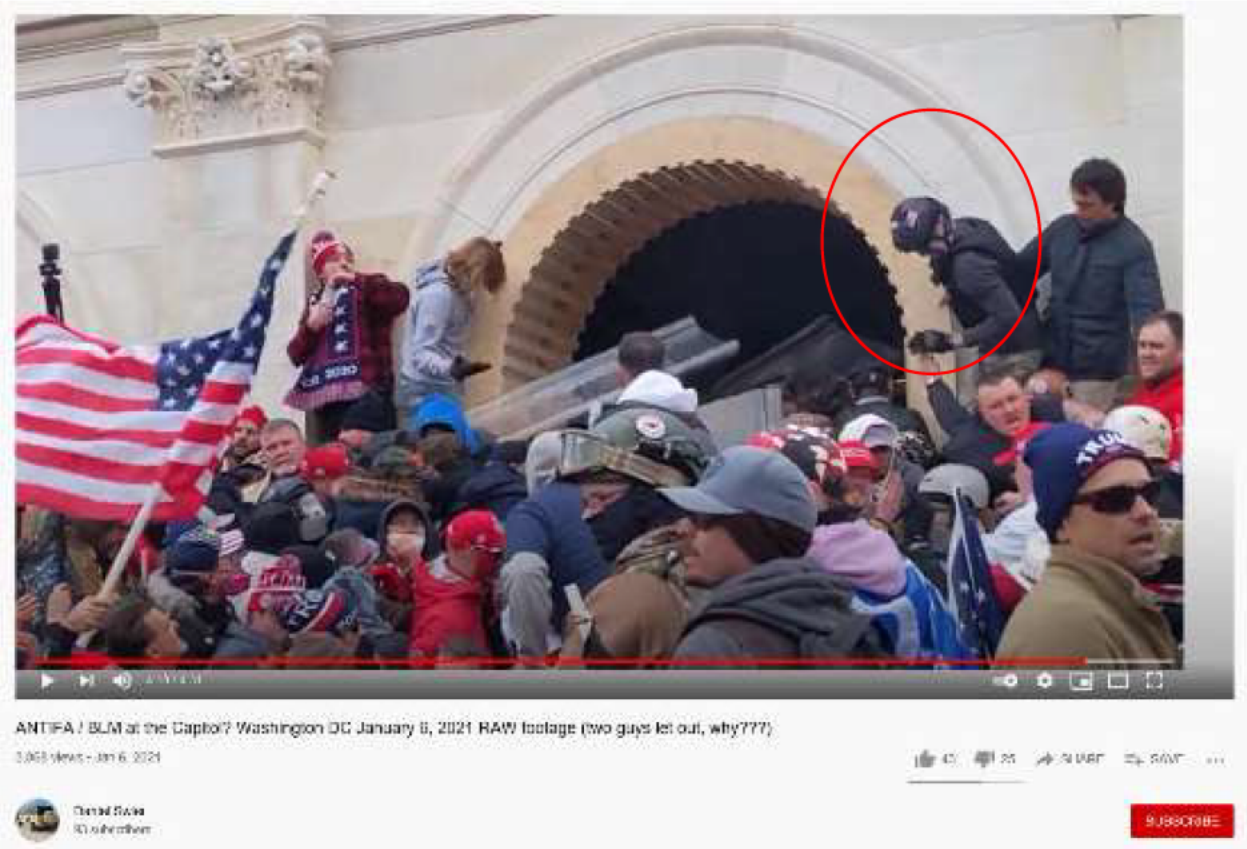
In the above still shot, #FlagGaiterCopHater's hair, styled in a bun low on his neck, can be seen, as well as a distinctive mark on the back of his helmet.

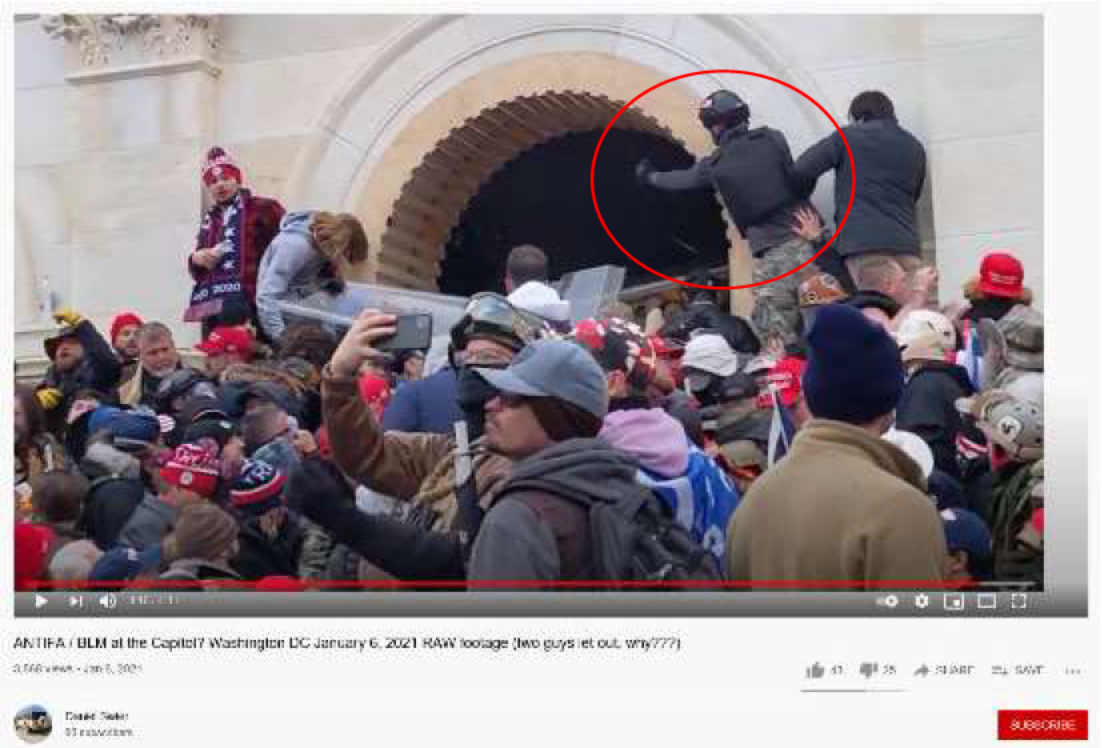
As part of its investigation, the FBI discovered a video called "ANTIFA / BLM at the Capitol? Washington DC January 6, 2021 RAW footage (two guys let out, why?)" posted on seditionhunters.org on March 17, 2021 that was originally posted to YouTube on January 6, 2021. The video showed #FlagGaiterCopHater at the Lower West Terrace entrance to the Capitol Building that was being guarded by law enforcement officers trying to keep the rioters out of the Capitol.[1] Based on my experience as part of the investigation into the Capitol riots, I know that this video depicts events that occurred at the Capitol Building and Grounds in Washington, D.C. on the afternoon of January 6, 2021. Also based on my experience investigating the Capitol riots, I know that officers with the Capitol Police Department and the Metropolitan Police Department were defending the tunnel in front of the Lower West Terrace entrance against the advance of the rioters (the "police line") and were clearly visible to anyone in the front of the crowd, as seen in the still shots from the Capitol surveillance video discussed below. It is clear #FlagGaiterCopHater is taking aim at the police line. Two still shots from this video are shown below, and the individual known as #FlagGaiterCopHater has been circled in red.



[1] This video is no longer publicly available on YouTube, but was captured by the FBI.

In the below stills taken from the same video, #FlagGaiterCopHater can be seen receiving an object from a person in the crowd, which he then pointed toward the police line located inside the tunnel behind the arched doorway who were protecting the Capitol Building. Based on my review of this and other videos of the riot, as well as my experience investigating this case, I believe the object #FlagGaiterCopHater received was a form of lacrimal agent that he then used against the police line.


ANTIFA / BLM at the Capitol? Washington DC January 6, 2021 RAW footage (two guys let out, why???)
SUBSCRIBE


ANTIFA / BLM at the Capitol? Washington DC January 6, 2021 RAW footage (two guys let out, why???)
SUBSCRIBE

In a number of photos discovered by the FBI on open-source website seditionhunters.org, #FlagGaiterCopHater can be seen using various objects, including a crutch and a metal pole, as bludgeoning weapons or projectiles against the line of law enforcement officers protecting the Capitol building. I know this is the same individual as shown in the images above because he is wearing the same gear, including the distinctive helmet and flag gaiter, and he is located in the same place and taking the same actions as in the videos of #FlagGaiterCopHater noted above and further described below. Four photos from this website are shown below:

In a close-up image of #FlagGaiterCopHater on the West Terrace of the Capitol Building on January 6, his distinctive yellow and black bracelet, flag gaiter and bun are visible.

Surveillance footage of the Capitol Building on January 6, 2021 obtained from the Capitol Police Department also shows #FlagGaiterCopHater attacking law enforcement officers in the tunnel in front of the West Terrace entrance to the Capitol Building, including by spraying them with what appears to be a lacrimal agent and using a pole and a crutch to strike officers, as seen in the still shots from the surveillance footage below:

MPDC
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On March 12, 2021, an FBI Special Agent observed a number of Twitter users alleging that #FlagGaiterCopHater had been identified as David Nicholas DEMPSEY.

In a YouTube video posted January 10, 2021 titled "8 January 6th Heshy and Team… Deblabio…and the Composer" posted by the channel, UpsideDownWorld, at https://www.youtube.com/watch?v=mjKWV68CLtE (from 4:33 – 7:50), #FlagGaiterCopHater can be seen with his American flag gaiter pulled down at several points. Based on my knowledge of DEMPSEY's appearance described above, I believe this to be DEMPSEY. Two screen shots from this video are shown below.

youtube.com/watch?v=mjKWV68CLtE

YouTube

Search

WASHINGTON

8 January 6th Heshy and Team... Deblabio...and the Composer

38 views • Jan 10, 2021

5 0 SHARE SAVE ...

UpsideDownWorld
63 subscribers

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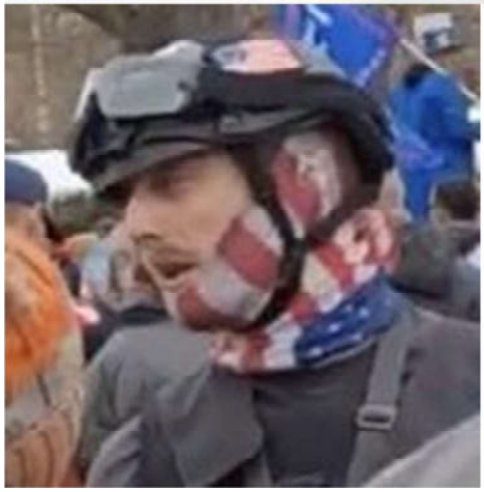


The FBI has obtained and reviewed numerous videos of #FlagGaitorCopHater as part of its investigation, and we have identified several outfit changes that DEMPSEY makes during the course of the events that took place on January 6, 2021. These changes were also identified on various social media sites. The outfit changes identified to date are described below in the images taken from seditionhunters.org.

#FlagGaiterCopHater

Outfit 3 - Blue Camo Shirt

- camo pants
- navy high top Chuck's
- long sleeve gray shirt under t-shirt
- black tactical vest (possibly under shirt)
- gaiter (possibly U.S. flag)
- black gloves
- bump at the base of neck (man bun)
- black beanie
- sunglasses

Based on the items of clothing and equipment that did not change for #FlagGaiterCopHater during the course of the day on January 6, 2021, like the camouflage pants and high-top tennis shoes, the physical characteristics of the wearer, and the fact that the same individual wearing the different outfits was captured on video with the same companion at different times and locations during day, I believe the person shown in all three outfits above to be DEMPSEY.

The FBI interviewed two witnesses who knew David Nicholas DEMPSEY from school. These witnesses had known DEMPSEY for at least seven years, though DEMPSEY dropped out of school during that time. Both witnesses positively identified #FlagGaiterCopHater from the gallows video and from the UpsideDownWorld video above as David DEMPSEY.[2]

The FBI further discovered that David Nicholas DEMPSEY had been arrested in Santa Monica, California on October 19, 2019 for allegedly spraying anti-Trump protestors on the pier with bear spray. This incident was captured on video at https://www.nbcnews.com/news/us-news/man-charged-spraying-bear-repellent-anti-trump-protesters-santa-monica-n1071121, among other places. Three still photos of DEMPSEY from the video are below:

[2] One witness had last seen DEMPSEY in approximately 2010, and the other in approximately 2008.

These images of DEMPSEY show the same body type, facial features, facial hair and bun at the back of the neck as #FlagGaiterCopHater.

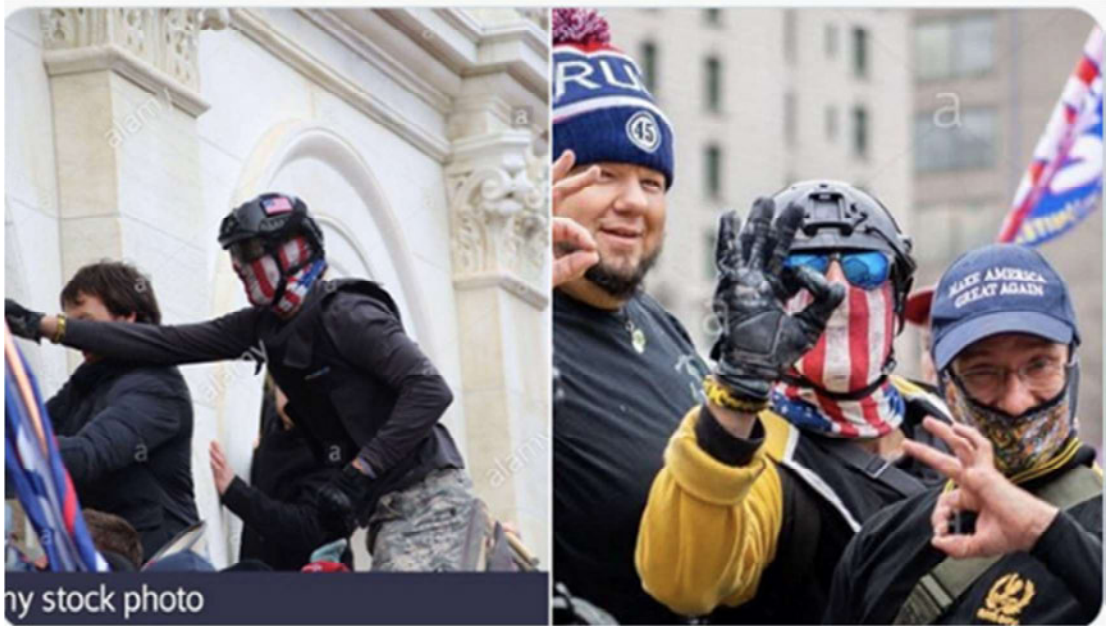
The FBI obtained booking photos from the Santa Monica police from the arrest of David Nicholas DEMPSEY for the October 19, 2019 incident described above, one of which is shown below:

Two FBI agents also observed David Nicholas DEMPSEY enter the Los Angeles Airport Courthouse on May 17, 2021 to attend a scheduled hearing. At that time, they positively identified DEMPSEY as the individual known as #FlagGaiterCopHater from the videos and photos reviewed in this investigation.

In the images below, which were obtained from the Twitter feed of Person 1,[3] an individual who appears to be #FlagGaiterCopHater can be seen in the image at right wearing a black and yellow woven bracelet on his right arm, similar to that worn by #FlagGaiterCopHater on January 6, 2021, as seen in the image on the left and in the photos above. In the picture on the right, which Person 1 alleged was taken at the March On Washington, D.C. on December 12, 2020, the individual dressed like #FlagGaiterCopHater is also wearing a yellow and black colored woven bracelet.[4]

[3] The identity of Person 1 is known to the FBI.

[4] The FBI does not believe that Person 1 has any personal relationship with DEMPSEY.



In the image below, which was also obtained from Person 1's Twitter feed on March 11, 2021, DEMPSEY, far left, can be seen wearing a yellow and black colored woven bracelet on his right wrist. Also present in the photo are two other males. The male on the right wearing glasses appears to be the same individual shown in the photo above on the right wearing glasses and a blue baseball cap. Person 1 alleged that this photo was taken on November 21 [2020], in Sacramento.

Based on the evidence shown above and my experience investigating this case, there is probable cause to believe that the individual known as #FlagGaiterCopHater is David Nicholas DEMPSEY.

Based on the foregoing, your affiant submits that there is probable cause to believe that David Nicholas DEMPSEY violated 18 U.S.C. § 1752(a)(1), (2) and (4), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do so; (2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions; and (4) knowingly engages in any act of physical violence against any person or property in any restricted building or grounds; or attempts or conspires to do so; and (b)(1)(A) during and in relation to the offense, did use and carry a deadly and dangerous weapon, to wit: a crutch, a metal pole, lacrimal spray and a club-like object. For purposes of Section 1752 of Title 18, a "restricted building" includes a posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service, including the Vice President, is or will be temporarily visiting; or any building or grounds so restricted in conjunction with an event designated as a special event of national significance.

Your affiant submits there is also probable cause to believe that David Nicholas DEMPSEY violated 40 U.S.C. § 5104(e)(2)(D), and (F) which makes it a crime to willfully and knowingly (D) utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress, or the orderly conduct in that building of a hearing before, or any deliberations of, a committee of Congress or either House of Congress; and (F) engage in an act of physical violence in the Grounds or any of the Capitol Buildings.

Your affiant submits there is probable cause to believe that David Nicholas DEMPSEY violated 18 U.S.C. 231(a)(3), which makes it unlawful to commit or attempt to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function. For purposes of Section 231 of Title 18, a federally protected function means any function, operation, or action carried out, under the laws of the United States, by any department, agency, or instrumentality of the United States or by an officer or employee thereof. This includes the Joint Session of Congress where the Senate and House count Electoral College votes.

Based on the foregoing, your affiant submits that there is probable cause to believe that David Nicholas DEMPSEY violated 18 U.S.C. § 11l(a)(l) and (b), which makes it a crime to forcibly assault, resist, oppose, impede, intimidate, or interfere with any person designated in section 1114 of Title 18 while engaged in or on account of the performance of official duties and using a deadly or dangerous weapon (including a weapon intended to cause death or danger but that fails to do so by reason of a defective component). Persons designated within section 1114 include any person assisting an officer or employee of the United States in the performance of their official duties.

Finally, your affiant submits there is probable cause to believe that David Nicholas DEMPSEY violated 18 U.S.C. § 1512(c)(2), which makes it a crime to obstruct, influence, or impede any official proceeding, or attempt to do so. Under 18 U.S.C. § 1515, congressional proceedings are official proceedings.

[redacted]

Federal Bureau of Investigation

Subscribed and sworn pursuant to Fed. R. Crim. P. 4.1 and 41(d)(3), this 25th day of August 2021.

Digitally signed by G. Michael Harvey
Date: 2021.08.25 10:54:41 -04'00'

G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE